

No. 13-1257 RV

<sup>1</sup> All references to “CSR” are to the Missouri Code of State Regulations, as current with amendments included in the Missouri Register through the most recent update, unless otherwise specified.

### **Facts Taken as True for Purposes of Ruling on the Motion**

Based upon the complaint, which we take as true for purposes of ruling on the motion for decision on the pleadings, we find the following facts:

1. In early 2013,<sup>2</sup> the Langs paid fees<sup>3</sup> to renew the license plates on their boat trailer<sup>4</sup> for an additional two years.
2. Sixty days after paying fees to renew the license plates on their boat trailer, the Langs purchased a new boat trailer. This new boat trailer was located 150 miles from their original boat trailer.
3. Rather than travel 300 miles round trip to transfer license plates from their original boat trailer to their new boat trailer, the Langs paid fees<sup>5</sup> for new license plates on the new boat trailer.
4. The Langs requested a refund<sup>6</sup> of the fees<sup>7</sup> paid for the unused portion of renewal of license plates on their original boat trailer.
5. On June 24, 2013, the Director issued a final decision denying the Langs' refund application.

### **Conclusions of Law**

This Commission has jurisdiction over appeals from the Director's final decisions.<sup>8</sup> The Langs have the burden to prove that they are entitled to a refund.<sup>9</sup> Our duty is not merely to

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<sup>2</sup> The actual date is not specified in the complaint or the exhibit attached to the complaint.

<sup>3</sup> Neither the complaint nor the exhibit attached to the complaint specifies the amount of the fees.

<sup>4</sup> The year, make, and model of the boat trailer is not specified in the complaint or the exhibit attached to the complaint.

<sup>5</sup> The date in which the Langs paid fees is not specified in the complaint or the exhibit attached to the complaint.

<sup>6</sup> The date of this request is not specified in the complaint or the exhibit attached to the complaint.

<sup>7</sup> The amount of refund requested is not specified in the complaint or the exhibit attached to the complaint.

<sup>8</sup>Section 621.050. Statutory references are to RSMo 2000, unless otherwise noted.

<sup>9</sup>*Id.*

review the Director's decision, but to independently apply existing law to the facts and render the ultimate administrative decision.<sup>10</sup>

The Langs argue that a refund is appropriate because the fees were paid for a license plate renewal that will never be fully used. The Director argues that no provision of law authorizes him to issue a refund under these circumstances. The Director is correct.

A refund is a limited waiver of sovereign immunity and is not allowed unless expressly permitted by statute.<sup>11</sup> “When a state consents to be sued, it may be proceeded against only in the manner and to the extent provided by the statute; and the state may prescribe the procedure to be followed and such other terms and conditions as it sees fit.”<sup>12</sup>

Section 301.140.3<sup>13</sup> provides:

License plates may be transferred from a motor vehicle which will no longer be operated to a newly purchased motor vehicle by the owner of such vehicles. The owner shall pay a transfer fee of two dollars if the newly purchased vehicle is of horsepower, gross weight or (in the case of a passenger-carrying commercial motor vehicle) seating capacity, not in excess of that of the vehicle which will no longer be operated. When the newly purchased motor vehicle is of greater horsepower, gross weight or (in the case of a passenger-carrying commercial motor vehicle) seating capacity, for which a greater fee is prescribed, the applicant shall pay a transfer fee of two dollars and a pro rata portion of the difference in fees. When the newly purchased vehicle is of less horsepower, gross weight or (in the case of a passenger-carrying commercial motor vehicle) seating capacity, for which a lesser fee is prescribed, the applicant shall not be entitled to a refund.

Section 301.140.3 allows a reduced transfer fee when license plates are transferred from a motor vehicle that will no longer be operated to a newly purchased motor vehicle by the owner of such vehicles. Based upon the facts before us, this subsection does not apply to the Langs for two

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<sup>10</sup> *J.C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16, 20-21 (Mo. banc 1990).

<sup>11</sup> *Community Fed. Sav. & Loan Ass'n v. Director of Revenue*, 796 S.W.2d 883, 885 (Mo. banc 1990).

<sup>12</sup> *State ex rel. Brady Motorfrate, Inc. v. State Tax Comm'n*, 517 S.W.2d 133, 137 (Mo. 1974).

<sup>13</sup> RSMo Supp. 2012.

reasons. First, 301.140.3 allows for the transfer of license plates between motor vehicles and specifically fails to include language regarding transfer of license plates between trailers.

Second, even if we were to assume that 301.140.3 did allow for the transfer of license plates between trailers, the Langs could have, but did not, transfer license plates from their original boat trailer to their new boat trailer. This section also expressly does not allow a refund.

We have found no provision of law allowing a refund to the Langs.<sup>14</sup> Neither the Director nor this Commission can change the law.<sup>15</sup> We have no authority to allow a refund under these circumstances.

### **Summary**

The Langs are not entitled to a refund of fees paid for renewal of license plates on their boat trailer.

SO ORDERED on August 22, 2013.

\s\ Sreenivasa Rao Dandamudi  
SREENIVASA RAO DANDAMUDI  
Commissioner

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<sup>14</sup>Only Section 301.121, RSMo Supp. 2012, provides for a refund of certain amounts paid when a license plate is surrendered. This section, however, does not apply to the Langs because it only applies to commercial vehicles registered in excess of fifty-four thousand pounds.

<sup>15</sup>*Lynn v. Director of Revenue*, 689 S.W.2d 45, 49 (Mo. banc 1985).